

A G R E E M E N T

AGREEMENT made and entered into this 7th day of September 1979, by and between the Mayor and Council of Rockville, Maryland, a municipal corporation (the "CITY"), and Montgomery County, Maryland, a municipal corporation (the "COUNTY").

W I T N E S S E T H:

WHEREAS, the COUNTY, by Bill No. 16-78 effective April 17, 1978, has enacted a revised Section 20-37 of Chapter 20 of the Montgomery Code of 1972, to provide a comprehensive insurance and self-insurance program, and

WHEREAS, Subsection (d) of each such Section 20-37 has authorized the COUNTY to cooperate with and enter into agreements with the CITY, among others, for the purpose of obtaining and providing comprehensive insurance coverage in the most economical manner, and

WHEREAS, the COUNTY, by Resolution No. 8-1628 adopted November 15, 1977, has approved the development of an expanded self-insurance program, and

WHEREAS, insurance coverage has become increasingly more costly in recent years, and

WHEREAS, the parties find it to be in the public interest to obtain insurance coverage through the Montgomery County Self-Insurance Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the COUNTY and the CITY do agree as follows:

I. Intent to Enter Montgomery County Self-Insurance Program

The approval of this agreement by the City Manager shall be deemed to be proof of the CITY'S intent to receive insurance coverage from the Montgomery County Self-Insurance Program beginning at 12:01 A.M., July 1, 1979.

II. Insurance Coverage

The CITY shall receive insurance coverage for workmen's compensation, comprehensive general liability, comprehensive auto liability, public officials legal liability and excess coverage from the Montgomery Self-Insurance Program beginning at 12:01 A.M., July 1, 1979.

The insurance coverages in effect for the CITY as of June 30, 1979 shall be used as the basis for any claim payments made by the Montgomery County Self-Insurance Program for claims made against the CITY.

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Insurance coverage and the basis for the payment of claims against the CITY for public officials legal liability shall be the same as for the COUNTY.

The coverage provided to the CITY by the Montgomery County Self-Insurance Program will not include any surety bond coverage, buildings and contents or boiler and machinery coverage.

The CITY reserves the right to plead immunity in a proper case where insurance coverage is provided by the Montgomery County Self-Insurance Program.

Any settlements which arise from claims against the CITY from "hold harmless" provisions of contracts in which the CITY is a party shall be paid by the Montgomery County Self-Insurance Program in accordance with the disbursement approval procedures established by the Interagency Insurance Panel.

III. Insurance Coverage Changes

Any changes in coverages recommended by the Interagency Insurance Panel which require an increased expenditure by the CITY would become effective on the July first following its adoption by the Interagency Insurance Panel. Such coverage changes must be recommended by the Interagency Insurance Panel at least eight months prior to the beginning of the next fiscal year in order that adequate time be provided for reflecting expenditure increases in the following fiscal year's budget. If the Mayor and Council do not fund the required expenditure increase, the coverage change recommended by the Interagency Insurance Panel will be considered void and the existing coverage will remain in effect.

IV. Prior Insurance Liabilities

Any liabilities incurred by the CITY prior to its receiving insurance coverage from the Montgomery County Self-Insurance Program will remain as liabilities of the CITY and/or its present insurance carriers.

V. Continuation of Current Insurance Policies

The City shall be responsible for maintaining insurance coverage that is not provided for in this agreement.

VI. CITY Responsibilities Prior to Entering Montgomery County Insurance Program

The CITY shall be responsible for obtaining all approvals for self-insurance required by State agencies prior to its entry into the Montgomery County Self-Insurance Program. The Interagency Insurance Panel and the staff of the County Finance Department's Division of Risk Management will cooperate in all ways to assist the CITY to obtain all required approvals. Written copies of all letters of approval shall be sent to the Interagency Insurance Panel.

The CITY shall give proper cancellation notice to its respective insurance companies as to the cancellation time and date for each policy being terminated.

The CITY shall provide the Interagency Insurance Panel, along with the signed copy of this agreement, with two (2) copies of all insurance policies which are in effect the date this agreement is signed.

VII. Appointment to Interagency Insurance Panel by City Manager

The City Manager shall be responsible for the appointment of a member of his staff to the Interagency Insurance Panel and advising the County Finance Director, in writing, of the name of his appointee. Such appointment shall remain in effect until such time as the County's Finance Director is advised that a new appointment to the Panel has been made by the City Manager. This appointee shall represent other municipalities that may join the Self-Insurance Program in the future.

VIII. Minutes of Interagency Insurance Panel

Copies of all meeting minutes and applicable status reports prepared by the Interagency Insurance Panel will be provided to the City Manager.

IX. Procedures Established by Interagency Insurance Panel

Copies of all standardized procedures developed by the Interagency Insurance Panel in areas such as disbursement approval, rate setting estimates, claims payout reviewing, partial claims administration, and risk management will be provided to the City Manager following their approval by the Interagency Insurance Panel.

X. Reporting of Coverage Changes

It shall be the responsibility of the CITY to promptly advise the

Interagency Insurance Panel, through the County Finance Department's Division of Risk Management, of additions and deletions of its physical property, including motor vehicles, and of its personnel complement which will effect the liability of the Montgomery County Self-Insurance Program.

XI. Funding and Budgeting Procedures for the Montgomery County Self-Insurance Program

The Montgomery Self-Insurance and Risk Management Programs shall be funded through appropriation from the County's General Fund and contributions from participating agencies. The CITY'S contribution shall be based on FY 1978 insurance premium costs of the CITY. A portion of this contribution, to be agreed upon between the City Manager and the Montgomery County Director of Finance, shall be used for payment of claims and overhead expenses. The remainder, approximately one percent of the CITY'S operating budget, shall be placed in the unencumbered reserve of the Montgomery County Self-Insurance Program. This amount, together with amounts provided under Article XII of this agreement, shall be separately identified within the unencumbered reserve, and shall remain as an asset of the CITY. The CITY'S contribution to the unencumbered reserve shall be under the control of the Montgomery County Self-Insurance Program as long as the City is a participant in the program. If this contract is terminated, the CITY'S contribution to the unencumbered reserve shall be returned to the City, exclusive of any amounts that are encumbered for the payment of claims against the CITY.

The Interagency Insurance Panel shall prepare an annual operating budget for the Montgomery County Self-Insurance and Risk Management Programs. This budget shall be submitted to the City Manager by the Interagency Insurance Panel no later than November first (1st) of each year. Any comments which the City Manager wishes to make on the proposed budget of the Montgomery County Self-Insurance Program shall be returned to the Interagency Insurance Panel by November twelfth (12th). The Interagency Insurance Panel shall submit the proposed budget of the Montgomery County Self-Insurance Program along with all City Manager's comments, if any, to the County Executive, not later than December first (1st).

The Interagency Insurance Panel shall also prepare a list of all safety related expenses which it feels should be placed in the CITY'S budget along

with a detailed justification for such safety improvements. This list shall accompany the proposed budget of the Montgomery County Self-Insurance Program.

XII. Insurance Policy Refunds and Penalties

Any refunds, including experience credit returns or other payments which the CITY receives after July 1, 1979 as a result of action involving insurance policies in effect prior to July 1, 1979, shall be transferred into the Montgomery County Self-Insurance Program immediately upon their receipt by the CITY. Any such refunds shall become part of the CITY'S portion of the unencumbered reserve of the Montgomery County Self-Insurance Program and shall be accounted for and disbursed in accordance with Article XI.

Penalties such as audit premiums of insurance policies in effect prior to July 1, 1979 shall be paid by the Montgomery County Self-Insurance Program.

XIII. Accident Prevention Program

The County Finance Department's Division of Risk Management shall be responsible for providing risk management safety inspectors, safety engineering and accident prevention service to the CITY. All such services will be funded by the Montgomery County Self-Insurance Program. The City Manager shall advise the County's Finance Director of the person on his staff who shall coordinate the operation of the Division of Risk Management with the CITY'S staff. The Division will be responsible for keeping the Interagency Insurance Panel advised of its work with the CITY.

XIV. Claims Administration Service

The following provision will be a part of the contract between the Montgomery County Self-Insurance Program and a claims administration service. All claims administration service shall be paid by the Self-Insurance Program.

- A. Upon assignment of a claim involving the CITY a file will be created and an experienced adjuster assigned to the case by the claims administration service. The CITY will be made aware of the adjuster handling the case as well as the file number assigned to the case. The adjuster assigned to the case will make contact with the involved person(s) promptly but not later than within twenty-four (24) hours after assignment.

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- B. The adjuster assigned to the claim will report to the City within fourteen days after assignment. The First Report will reflect the coverage; nature of the loss; the facts uncovered by investigation; the determination of liability, and the amount to be reserved for the claim if the participating agency is liable. If the participating agency is liable, the report will reflect the amount of monies to be paid and to whom the monies are to be paid. In serious cases the responsible party for the participating agency will be notified by the adjuster as to the liability exposure immediately after he contacts the person(s) involved in the claim.
- C. Interim Reports: The claims administration service will render Interim Reports to the City every thirty days subsequent to the initial report on cases which cannot be concluded on first call.
- D. Final Reports: Final Reports to the CITY will reflect the adjuster's determination of coverage, liability as well as the damages involved. The adjustment process used by the adjuster to determine amount of payment will be fully explained in this report. A complete report for review by the CITY will be made if the amount of monies exceeds the delegated authority given to the Contractor in any payment procedures agreed to by the parties thereto.
- E. Statistical reports will be furnished to the CITY. The reports will include the number of assignments received from the participating agency; the nature of the claim; the amount paid, if any, and the number of assignments closed. Sufficient detail will be given for a statistical analysis of the causes of claims arising out of the Fund. The quarterly report will be designed to provide whatever statistical information the participating agency and the Interagency Insurance Panel may desire.
- F. The claims administration service will assist the designated counsel with whatever is needed to properly protect the interest of the CITY in litigation.
- G. The claims administration service will process claims arising from all elected or appointed officials, deputies, employees, members of special boards or commissions, and volunteer workers; and all other State or federally funded programs where the CITY is required or elects to provide

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liability insurance.

- H. The claims administration service will consider claim files of the Self-Insurance Program to be the property of the primary agency involved in each claim. In the event of termination of services by the claims administration service, claim files will be disposed of according to instructions from and at the expense of the appropriate agency. Access to information contained in these files will be afforded to any authorized personnel of the appropriate agency and representatives of the Interagency Insurance Panel.

The claims administration service shall provide the following services in processing Workmen's Compensation claims for the CITY:

- A. Perform on behalf of participating agencies the discharge of its duties to its employees under the Workmen's Compensation and Employers Liability Laws of the State of Maryland.
- B. Examine, tabulate, and approve for payment all medical, hospital, compensation and other benefits required by the Workmen's Compensation Law which shall be paid in a manner prescribed by the County in accordance with the procedures agreed upon by the parties thereto.
- C. Furnish the CITY with claim record showing open claims and a tabulation of all payments made and reserves set up for benefits and expenses because of occupational injuries sustained by employees.
- D. In the event legal counsel is required for hearings before the Workmen's Compensation Commission, or in any other legal proceedings, arrangements will be made for same at the County's expense after appointment by the the County Attorney.
- E. Initiate subrogation proceedings in making reasonable administrative efforts to recover from third parties, benefits paid under this program for which they may be legally liable; and cooperate with such legal counsel as may be designated by the County Attorney in any legal action as may be necessary to effect such recovery.
- F. Promulgate annual combined Experience Modification factor for each participating agency and negotiate acceptance by excess insurance carrier in the event Aggregate Excess Insurance is purchased.
- G. Preparation of estimated Annual Payroll Report by classification for

each participating agency and calculation of estimated "Normal Premium".

- H. Assist with the preparation of all reports for signature by each participating agency, as may be required by the Workmen's Compensation Commission, including State Tax Report with annual payroll audit and Annual Statistical Information Report in specified detail, and within required filing dates.
- I. Assist in calculation of earned "Normal Premium", excess insurance premiums, service fee, and self-insurer's tax with breakdown between the various participating agencies for allocation purposes, as may be required.
- J. Approve all claims to be paid and preparation of checks drawn on Self-Insurance Fund, if required, with reports to CITY as to the amount paid or reserved from the Self-Insurance Fund on their behalf.
- K. Negotiate claims against any excess insurance provided in the program.
- L. Prepare and submit to the CITY quarterly claim and self-insurance fund status reports, and in succeeding years, with quarterly run-off summary reports for previous fiscal years.
- M. Investigate and adjust all claims.
- N. Establish and revise claim reserves for unsettled claims.
- O. Perform such other general administration services as necessary to discharge effectively each participating agency's duties under the Workmen's Compensation Law.

The claims administration service shall provide the following services in the processing of Automobile and General Liability Claims for the CITY.

- A. Examine all reports of accidents and/or claims submitted by participating agencies to Contractor to make necessary investigation with respect to such report and/or claim.
- B. Make reasonable efforts to dispose of all claims submitted by the CITY to the claims administration service, and prepare compromises, agreements, and/or releases for the CITY, and where required, file the same with the proper public authorities. In the event the CITY becomes involved in litigation requiring legal services, the County Attorney will appoint legal counsel who will be paid by the COUNTY. Contractor will submit its claim file too, and cooperate with designated legal counsel.
- C. Examine, tabulate and approve for payment all expenses incident to

claims, including payments in settlement of damages and/or injury, which shall be paid in a manner prescribed by the CITY in accordance with the procedure agreed upon by the parties thereto.

- D. Initiate subrogation proceedings and make reasonable administrative efforts to recover from third parties, all losses, including losses of less than \$1,000, for which they may be legally liable; and cooperate with such legal counsel as may be designated by County Attorney in any legal action as may be necessary to effect such recovery.
- E. Maintain a record of each individual claim reported to claims administration service and all such records shall be available during the term of the agreement for the inspection by authorized personnel of the CITY and representatives of the Interagency Insurance Panel.
- F. Prepare and file any and all reports, notices and claims which may be required from the CITY by any insurance company with which COUNTY may insure any part of the Self-Insurance Program's liability.
- G. Negotiate claims against any excess carrier with which CITY may insure any part of the Self-Insurance Program's liability.
- H. Prepare basic loss information necessary for completion of annual Application for Approval as a Self-Insurer, required to be filed with the Department of Motor Vehicles, including breakdown on injuries, property damage, claims payments, and reserves.
- I. Provide the CITY and any insurer with which the CITY may insure any part of the program's liability, with a quarterly Loss Fund Status Report showing a tabulation of payments made, reserves established, and disposition of claims reported to claims administration service. Quarterly reports will be provided for all prior years for which claims are open and pending.
- J. Approve all claims to be paid, and preparation of checks drawn on Self-Insurance Fund, if required, with quarterly report to CITY as to the amount paid or reserved from the Self-Insurance Fund on their behalf.
- K. Perform such other general administrative and advisory services that may be necessary to assist the CITY and other agencies participating in the Self-Insurance Program in developing and maintaining effective management controls.

- L. Establish and revise, as necessary, a claim reserve for unsettled claims.
- M. It is understood and agreed that claims administration service will process claims arising from all elected or appointed officials, deputies, employees, members of special boards or commissions, and volunteer workers, and all other State or Federally funded programs where the CITY is required or elects to provide liability insurance.
- N. It is understood and agreed that claim files covering the business of the Self-Insurance Program are considered to be the property of the CITY. In the event of termination of services these files will be disposed of according to the instructions from and at the expense of the CITY. Access of any information contained in these files will be afforded to any authorized personnel of the CITY and the Interagency Insurance panel.

XV. CITY Responsibilities in Claims Administration

The CITY shall be responsible for maintaining the same level of service within its staff as is presently provided to the CITY'S insurance carrier and shall extend the same service to the staff of the claims administration service, which the Montgomery County Self-Insurance Program will utilize to process claims against the Program. The CITY will be responsible for notifying the claims administration service within one working day, if possible, of all accidents which seem to fall under the insurance coverage provided by the Montgomery County Self-Insurance Program.

XVI. Provision of Forms for Claims Administration

All forms required for the claims administration service covered in this agreement will be provided and paid for by the Montgomery County Self-Insurance Program.

XVII. Use of Attorneys

The County Attorney shall defend claims covered in this agreement and shall consult with and advise legal counsel for the CITY as to the status of each claim against the CITY. Legal counsel for the CITY may elect to enter into the defense of any claim against the CITY but such participation shall not be funded out of the self-insurance program unless authorized by the County Attorney.

XVIII. Use of Expert Witnesses

The hiring of any expert witnesses required in legal cases involving the Montgomery County Self-Insurance Program shall be approved by the County Attorney and the Chief of the County's Finance Department's Division of Risk Management.

XIX. Use of Consultants

The hiring of consultants required to assist in the operation of the Montgomery County Self-Insurance Program or assist in a specific accident prevention or risk management activity shall be the responsibility of the Chief, Division of Risk Management of the County Finance Department with the approval of the Interagency Insurance Panel. Contracts shall follow the County Government's contracting procedures.

XX. Insurance Coverage Certificates

The Interagency Insurance Panel will provide the CITY, when required, with certificates to evidence the insurance coverage which the CITY has in force through the Montgomery County Self-Insurance Program.

XXI. Audits of the Montgomery County Self-Insurance Program

The Montgomery County Self-Insurance Program shall be audited annually by the Independent auditor for the Montgomery County Government. An audited financial statement for each fiscal year shall be presented to the City as soon as practical after the end of the fiscal year.

XXII. Agreement Revision

Requests for revisions of this agreement shall be sent to the Interagency Insurance Panel. The Panel shall be responsible for preparing the formal agreement revision and for transmitting such revision to all party(ies) in this agreement. The recommendation of the Interagency Insurance Panel regarding the proposed revision shall accompany the formal agreement revision.

XXIII. Agreement/Renewal or Cancellation

This agreement will automatically be renewed April 1, 1980, for the fiscal year 1980-81 unless a notice of intent to cancel is received by the Interagency Insurance Panel from either party to this agreement. Thereafter, the agreement will be automatically renewed on April first (1st) of the year prior to the next fiscal year unless a notice of intent to cancel is

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received by the Interagency Insurance Panel from either party to this agreement.

The effective date for any cancellation of this agreement must be 12:01 A.M., July first (1st) of the year that the cancellation is to be effective. Written notice of intent to cancel must be received by the Interagency Insurance Panel prior to April first (1st) of the year prior to the year that the cancellation is to be effective. This advance notice of cancellation is necessary if the insurance expenses are to be properly funded in the appropriate budgets of the COUNTY or the CITY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as the day and year first above written.

ATTEST:

MONTGOMERY COUNTY, MARYLAND

Cheryl L. Loner
Albert W. Gault
 Albert W. Gault, Director
 Department of Finance
 Montgomery County Government

BY: [Signature]
 Chief Administrative Officer

MAYOR AND COUNCIL OF ROCKVILLE

Helen M. Hughes

BY: Larry N. Blick
 City Manager

APPROVED AS TO FORM AND LEGALITY.
 OFFICE OF COUNTY ATTORNEY

BY: [Signature]
 DATE: 8/16/79

A G R E E M E N T A M E N D M E N T # 1

ATTACH A

This AGREEMENT AMENDMENT is entered into this 1st day of January, 1980, by and between the Mayor and Council of Rockville, Maryland, a municipal corporation (CITY), and Montgomery County, Maryland, a municipal corporation (the "COUNTY").

W I T N E S S E T H:

WHEREAS, on the 7th day of September, 1979, the parties hereto entered into a written agreement incorporated herein by reference and

WHEREAS, the parties expressly agree that all other terms and conditions of the aforesaid agreement of September 7, 1979, shall remain in full force and effect without any changes or modification whatsoever except as modified hereinafter with respect to "Insurance Coverage",

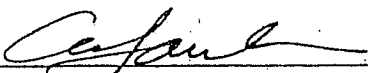
NOW THEREFORE, it is agreed that the section of said agreement entitled "Insurance Coverage" is hereby amended by the addition of the following, and it is further agreed that said agreement is hereby amended to provide for the payment by the CITY of an additional \$4,275.00 into the Program, to provide for funding for this insurance coverage change:

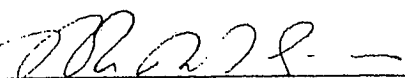
The CITY shall also receive liability coverage for "Non-owned auto" for CITY employees and volunteers and coverage for "Comprehensive General Liability" for CITY volunteers. Such coverage provided by the Montgomery County Self-Insurance Program will be excess of coverage provided by insurance policies held by employees or volunteers and the insurance coverage in effect for the CITY as of June 30, 1979 shall be used as the basis for any claims payments.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Amendment as of the day and year first above written.

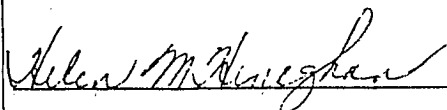
ATTEST:

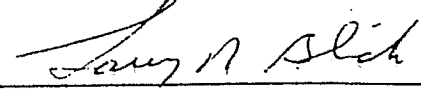
MONTGOMERY COUNTY, MARYLAND


Albert W. Gault, Director
Department of Finance

BY: 
Robert W. Wilson,
Chief Administrative Officer -

MAYOR AND COUNCIL OF ROCKVILLE



BY: 
Larry Blick, City Manager
City of Rockville

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AGREEMENT
AMENDMENT NUMBER TWO

THIS AGREEMENT AMENDMENT is entered into this 30th day of June, 1981, by and between Montgomery County, Maryland (hereinafter the "County") and the City of Rockville (hereinafter the "City").

W I T N E S S E T H:

WHEREAS, on or about the 7th day of September 1979, the parties hereto entered into a written Agreement, incorporated herein by reference; and

WHEREAS, on or about January 1, 1980, the September 7, 1979 Agreement was amended to include additional coverages for the City under the Montgomery County Self-Insurance Program; and

WHEREAS, it has always been the intent of the parties that certain coverages be provided to the City for Professional Liability Claims and Punitive Damages, but mention of these coverages was inadvertently omitted from the Agreement of September 7, 1979 and the Agreement Amendment of January 1, 1980; and

WHEREAS, the parties expressly agree that all other terms and conditions of the aforesaid Agreement of September 7, 1979, and the January 1, 1980 amendment shall remain in full force and effect without any change or modification whatsoever except as modified hereinafter with respect to "Insurance Coverage".

NOW, THEREFORE, it is agreed that the section of said Agreement entitled "Insurance Coverage" is hereby amended by the addition of the following to be retroactive to September 7, 1979, and it is further agreed that this insurance coverage change requires no increased expenditure by the City:

The City shall also receive coverage for "professional liability" claims and for punitive damages as follows:

1. Professional Liability Claims. Generally, it shall be the County's practice to indemnify the City,

and its employees and officials, for "professional liability" claims, through the Montgomery County Self-Insurance Program. "Professional Liability" may be defined as liability arising out of acts or omissions, actual or alleged errors, mis-statements or misleading statements, or neglect or breach of duty by employees or officials in the discharge of their duties. However, the County will not indemnify for claims based upon or attributed to the gaining in fact of any personal profit or advantage by the employee or official, or for claims resulting in a judgment or final adjudication based upon a determination that acts of fraud or dishonesty were committed by the employee or official. In addition, the County will not indemnify in cases of wanton or malicious wrongdoing, or for actions falling outside the scope of employment or taken in bad faith. In doubtful cases, the Interagency Insurance Panel will make final determination of the issue of indemnification, by majority vote, after affording all interested parties an opportunity to be heard.

2. Punitive Damages. The determination of whether the City, or its employees or officials, shall be indemnified for punitive damages by the County through the Self-Insurance Program, will be made by the Interagency Insurance Panel on a case-by-case basis. In all cases, the Panel shall inquire into the issues of scope of employment, the wilful, wanton or malicious nature of the conduct in question, the existence of any City regulations or orders governing the conduct in question, and any further issues relevant to the particular case. All interested parties may appear personally before the Panel

in order to make their recommendations and present evidence, and the Panel shall then make final determination of the issue of indemnification by majority vote.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Amendment as of the day and year first written above.

ATTEST:

MONTGOMERY COUNTY, MARYLAND

By: Mildred H. W. W. W.
 Chief Administrative Officer
 Purchasing Director

ATTEST:

CITY OF ROCKVILLE, MARYLAND

Helen M. Heneghan

By: Larry A. Shick
 City Manager

APPROVED AS TO FORM AND LEGALITY.
 OFFICE OF COUNTY ATTORNEY

BY: [Signature]
 DATE: 6/18/81

Approved:

[Signature]
 A. W. Gault
 Director of Finance